

MINUTES

WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting to be held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN
Monday, September 14, 2020, 6:00 PM

PLEDGE OF ALLEGIANCE: A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Bryan Flowers, Richard Reid, Bob Johnson, Bill Byers, President Jeff Valiant, and Jeff Willis.

MEMBERS ABSENT: Amanda Mosiman.

Also present were Morrie Doll, Attorney, Molly Barnhill, Executive Director, and Katelyn Cron, staff.

MINUTES: Bob Johnson made a motion to approve the August 10, 2020 minutes. The motion was seconded by Bill Byers and carried unanimously.

President Valiant said it looks like we have some primary plats and re-zonings on the agenda tonight. He said primary plats will get approval tonight, re-zonings will go to the Commissioner's on, will go as a recommendation to the Commissioner's at their next meeting on the...

Morrie Doll said the second Monday in October.

Mrs. Barnhill said the first one's in Lynnville so it'll go the Town Board of Lynnville tomorrow and the one in the county will go to the Commissioner's on October 12th.

President Valiant said okay, thank you.

PP-20-12: Martin Farm Subdivision PETITIONER: Noelle Stephen C. Land Surveying, by Stephen Noelle, Owner. OWNER: Darlene K. Heck, Deborah D. Martin, and Deena S. Russell. 26.42 acres located on the north side of New Harmony Road. Approximately 1700' west of the intersection formed by New Harmony Road and State Road 61. Being Lot 2 in Martin Farm Minor Amended Subdivision as recorded in Doc. #2020R-002734 in the Warrick County Recorder's Office. Boon Twp. Advertised in The Standard on September 3, 2020.

President Valiant called for a staff report.

Mrs. Barnhill stated we have all white pay receipts showing they were mailed correctly. Missing two green cards from the State of Indiana INDOT Real Estate Division and Terrence Corn. She stated that the zoning is agricultural and there is no flood plain. Mrs. Barnhill said this is a two lot

subdivision. She said Lot 1 has an existing entrance onto New Harmony Road, which is state right of way at this point. She said Lot 2 has received an approved entrance permit from INDOT. She said they have requested no drainage. She said Aaron Franz has approved the soil test sites on Lot 1. Lot 2 is not a building site. She said Veolia Water has capacity. Mrs. Barnhill said Martin Farm Minor Amended was recorded on March 24, 2020 and split the original lot into 2 separate lots. She said the owners of Lot 2 in Martin Farm Minor are now wanting to split that lot again and because it has not been one year, based upon Warrick County Subdivision Control Ordinance, they must file a primary plat rather than doing another minor subdivision. She said Lot 1 of the new development will be used as a building site for a single-family dwelling and Lot 2 will be for agricultural purposes only. She stated everything is in order.

Steve Noelle was present and stated he had nothing to add.

President Valiant called for questions from the board or remonstrators.

Tim Forston stated he was there on behalf of the Antique Steam and Gas Engine Club. He said are you making this a subdivision for houses or a regular subdivision for half acre plots or what there. He said there's just some questions on that there.

President Valiant said there should be a pad to sign in on, please, thank you.

Mrs. Barnhill said Tim, have you seen the plat.

Tim Forston said yes we got something in the mail.

Mrs. Barnhill said would you like to come up and look at it.

Tim Forston said if you don't mind.

Mrs. Barnhill said watch the step there.

Tim Forston said this is what they were concerned about, this one here we knew about the guy, he sold something to him. He said but we were concerned about this one here, people building houses there too. He said that was a major concern of them, we've got stuff over there and we have trouble with the people around there now.

Mrs. Barnhill said lot 2 is 21 acres and it is not a building site at this time so they could not get a permit to build anything on here unless they came back and redid everything.

Tim Forston said okay, that's what we were wanting, answers to our questions...

President Valiant called for any other remonstrators.

Seeing no other remonstrators, President Valiant stated he would be ready to entertain a motion.

Richard Reid made a motion to approve PP-20-12. The motion was seconded by Jeff Willis and carried unanimously.

PP-20-13: Williams Landing PETITIONER/OWNER: 2400 Green River Investments, LLC by Chris Combs, Managing Member. 11.609 acres located on the north side of Pollack Avenue. Approximately 0' north of the intersection formed by Pollack Avenue and Powers Drive. Ohio Twp 33-6-9. Advertised in the Standard September 3, 2020.

President Valiant called for a staff report.

Mrs. Barnhill stated we have all white pay receipts showing they were mailed correctly. She said we are missing 4 green cards: Bob W. & Lynda S. Myers, Elizabeth Mickus, Melea Segovia and Cynthia Neyhouse. She said the zoning is "R-1" One Family Dwelling. She said there is no flood plain. She said it's a 42 lot subdivision. She said the Commissioner's approved street plans today and the Drainage Board approved the drainage plans today. She said Newburgh sewer has capacity available for up to 42 lots and Chandler Water has capacity. She said the proposed development is a 42 lot subdivision with lots ranging in size from 0.173 acre to 0.490 acre lots. She said lot numbers 1 and 36 shall access Powers Drive only, lot numbers 20 and 21 shall access Monte Way only. She said lots 37, 38, 39, 40, 41 and 42 shall access Pollack Avenue and only have one driveway per lot and all remaining Lots shall access interior roads only. She said the plat is in order.

Chris Combs and Scott Buedel were present.

President Valiant asked do you have anything to add to the staff report.

Scott Buedel said no, I think that covers it.

President Valiant called for any questions from the board. He called for any remonstrators for or against the project.

Ascertaining there were no remonstrators or questions from the board, President Valiant announced he would be open to entertaining a motion.

Richard Reid made a motion to approve PP-20-13. The motion was seconded by Bill Byers and carried unanimously.

PC-R-20-10: PETITIONER/OWNER: Dalton Froman. To rezone 0.463 acres located on the E side of Main Street. Approximately 55' N of the intersection formed by Main Street and Second St., being part Lot 12 in the Original Plat of Lynnville, from "C-4" General Commercial Zoning District to "R-1A" Single Family Zoning District. Town of Lynnville. Advertised in The Standard on September 3, 2020.

President Valiant called for a staff report.

Mrs. Barnhill stated we have all the white pay receipts showing they were mailed correctly. She said did you get any green cards back yet.

Dalton Froman said I have all of them. He said I actually scanned and emailed them to your office, I talked to Chelsea.

Mrs. Barnhill stated bring the originals if you get a chance. Mrs. Barnhill stated the minimum lot size for "R-1A" is 9,000 square feet. She said the comprehensive plan shows the area to be moderate to high density residential. She said the existing land use is single Family Dwelling. She said the surrounding zoning land use to the east is zoned "C-4" and "R-1A" being single family dwellings. She said to the south is zoned "C-4" being commercial buildings. To the west is zoned "C-4" being Bradley's Funeral Home and single family dwellings. She said to the north is zoned "C-4" and "R-1A" being single family dwellings. She said the owner is trying to sell the property and the existing home is an allowed use in C-4, which is the original zoning, but the bank is requiring a residential zoning in order to continue with the loan. She said there is no flood plain and the existing access is to Main St. in Lynnville. She said the stated use is a single family dwelling which is in compliance.

Dalton Froman was present.

President Valiant said do you have anything to add.

Dalton Froman said no.

President Valiant called for questions from the Board.

Bob Johnson said this whole area is going to be one single home, is that what you're going to do there.

Dalton Froman said I'm actually selling this home, its four lots total. He said the house sits on one lot and there's three lots next door. He said I'm not building. He said the type of loan that the buyer is trying to get requires it to, they won't give loans on commercial property.

President Valiant said you're selling all the tracts, all the pieces together.

Dalton Froman said yes.

President Valiant called for any remonstrators for or against the project.

Doris Horn stated her name and said she is with the Lynnville Town Council. She stated the Town Council is in favor of the rezoning to residential. She stated back in the early 20's there was a house, a garage and next to the garage was a funeral home. She said the garage blew up and started the funeral home, of course it burnt it down. She said luckily the house was okay and his grandfather who lives in the house was okay and luckily there was not a body in the funeral home but you know, unless you're on these boards you don't realize that you have to rezone and that's what happened. She said it was commercial, the garage blew up and started the funeral home on

fire and now we have two empty lots. She said but like I said, we are in favor of this being rezoned so Dalton can sell his property and move. She said actually he's going to be my neighbor so I'm speaking on behalf of Dalton and the Town Council and we are definitely in favor of this.

President Valiant called for any further questions from the Board. He stated with no further questions, he would be open to a motion.

Bob Johnson made a motion to approve PC-R-20-10. The motion was seconded by Jeff Willis and carried unanimously.

President Valiant stated this will go to Lynnville Town Council tomorrow night for final approval.

Mrs. Barnhill stated Dalton you're coming up to get the ordinance and the minutes tomorrow.

Dalton Froman said yes I'm getting off work around 11 or 12.

Mrs. Barnhill said do you want to call us before you head up.

Dalton Froman said yes.

PC-R-20-12: PETITIONER/OWNER: Bel Air Land, LLC by Brian Wedding, CEO. To rezone 0.477 acres located on the N side of Oak Grove Road. Approximately 0' N of the intersection formed by Oak Grove Rd. and Danli Ct. from "A" Agricultural Zoning District to "R-2A" Multiple Family Zoning District. Ohio Twp. 13-6-9 (*Complete legal on file*) (Advertised in the Standard September 3, 2020.)

President Valiant called for a staff report.

Mrs. Barnhill said we have all of the return receipts to the adjacent property owners. She said the minimum lot requirement for "R-2A" is 6,000 square feet. She said the comprehensive plan shows the area to be moderate to high-density residential. She said existing land use is a single family dwelling. She said to the east is zoned "A" being single family dwellings. She said to the south is zoned "R-1" being Olde Piper Glenn Subdivision with single family dwellings and "A" being single family dwellings. She said to the west is zoned "A" and "PUD/C-1" being apartment buildings and single family dwellings. She said to the north is zoned "A" being Castle North Middle School. She said there is no flood plain. She added it has existing access to Oak Grove Road, which will probably need to be updated if they do the multi-family dwelling. She said the stated use is a multi-family dwelling which would be in compliance.

President Valiant said thank you.

Chris Combs, 2400 Green River Investments and Scott Buedel, Cash Waggner and Associates were present.

Chris Combs said I would just like to say a few things because I am not the owner of the property. He said Mr. Brian Wedding could not be here due to the hurricane, so he asked me to

step in in his place because I am the one who is actually going to be building the duplex. He said I brought plans just to show you what is going on there. He said there used to be a mobile home trailer, as Molly probably told you, that was removed off of that property and now it is going to be a duplex. He said that is the plan for this and then I brought the plans just so you could see what the purpose of this is and what he is wanting to do. He said we are currently remodeling the other two houses that are there and we are going to have to bring the sewer underneath the road to connect to all three properties. He said so this is a pretty expensive little venture for Mr. Wedding but I just wanted to make sure the air was clear on what was actually happening on the property as the...you know he is spending quite a bit of money to do this. He said this is going to be a significant upgrade to what is currently there, and was there.

Scott Buedel said just to follow up on what Chris said, the two properties that he is referring to, the two that are basically most affected by the rezoning would be the east and west adjoiners and those two properties he owns too. He said he is remodeling those houses, but the house that was on this property was not worth saving so it has been removed.

Richard Reid asked so are you going to have two single family dwellings and one duplex.

Scott Buedel replied well there is a single family home on a piece of property to the west, there will be a single family home on the property to the east, both of which he already owns.

Richard Reid said okay. He asked what size are the duplexes.

Chris Combs said in total the living space is 2400 to 2900 square feet.

Scott Buedel said per side.

Chris Combs said per unit, yeah.

Richard Reid said that is nice.

Chris Combs said it is going to be, you know you are looking at about \$350,000 a side. He said so it is about \$700,000 for the whole duplex. He said I brought plans for you all to see if you would like to see them. He said I have the elevations and everything so you know it will be very nicely done, well much nicer than the existing housing on the property.

President Valiant asked so you said Mr. Wedding was tied up with the hurricane or something like that.

Chris Combs said that is correct.

President Valiant asked do you have any kind of Power of Attorney or anything.

Chris Combs said I do not.

President Valiant said you do not.

Chris Combs said I do not. He said I am just here to tell you what the plan was.

President Valiant said gotcha.

Chris Combs said I have no legal representation in any way. He said I just was here to explain to help. He said Scott and I were asked today.

President Valiant said sure.

Chris Combs said I just thought that I could give my input and he would appreciate if we could get that. He said I needed to step in and help him because he is going to be tied up for a while with the hurricane. He said he could be tied up for weeks because of that. He said he is down in Houston, or down in Texas re-building from the hurricane.

President Valiant said gotcha.

Chris Combs said he owns rootclaim.com, it is one of his companies.

President Valiant said oh wow.

Chris Combs said they are going to be there for three years.

President Valiant said yeah, it will be awhile.

Chris Combs said I am sure he will come back up here before then but I just offered to fill in on his behalf.

President Valiant said sure, yeah.

Scott Buedel said just to follow up with one other, just from the stand point of the rezoning itself, like I said, east and west of the property to be rezoned. He said he owns those properties, so he would be the one that is most affected. He said to the north is the school corporation and then to the west of the drive to the school corporation is the apartment complex that is in existence and I think it is a nice apartment complex that is in existence which is well maintained. He said so, from the standpoint of kind of fitting in to the neighborhood, the duplexes should suit the neighborhood pretty well.

President Valiant said gotcha. He said before we get any further, is there any remonstrators here for or against this if so please step forward.

Krista Lockyear, Lockyear Law was present.

Krista Lockyear said six neighbors from the immediate adjoining area, withstanding the property owner from each direct side. She said if I could I have a petition I would like to pass out to everyone signed by these owners (she proceeded in passing out the petition). She said so as you

can see from the petition all of the owners are... She said well, one of them is across the street from this property at Danli Court. She said they would actually be driving straight into that property as they come out onto Oak Grove Road. She said the rest of them are further on down Oak Grove Road. She said the concern of her clients is a bit of a creep and that sliding slope, if you will, and this really is not what we want with the rest of Oak Grove Road. She said we acknowledge there is a beautiful apartment complex right there on the corner, which is fitting for a higher density, right on the highway intersection with Oak Grove Road but the concern is we rezone this to multi-family, and then the next one goes to multi-family, and then the next one goes to multi-family. She said admittedly I am not from the area. She said my clients asked that I would drive out here and just kind of get the feel, and I did, and there is a really beautiful feel of large, open spaces. She said everyone owns their own home, not rentals, once you get past the apartment complex. She said my folks are very, very concerned about diminution of property values and again, slippery slope of rezoning this. She said there is nothing to say that this is not a start to a trend and therefore they are admittedly opposed to this.

President Valiant said thank you, ma'am.

Krista Lockyear said thank you.

Bob Johnson said I have actually gotten calls on this property.

President Valiant asked anyone else in here, remonstrations for or against.

Chris Combs asked can I add something to that.

President Valiant said sure, I was going to invite you guys back up.

Chris Combs said so I can certainly understand that concern, but we are going to be... He said you know those are... He said we have to connect those two together, which are put in a PUD, which is what we are doing. He said I currently do that on Bell Road in Magnolia Place, so these are very similar to that in which we sell that we are building. He said we are building 72 of them connected in six unit buildings versus a duplex. He said I can certainly understand the concern on that, and again I am just here merely going to build the thing if it gets approved or whatever. He said keep in mind though each one of those units is going to be more expensive than most of those houses along there, and there is only going to be two of them. He said it is not like there is going to be... He said you know, I showed everyone the picture of what it is and again I am just trying to explain it. He said that is all I have got.

Richard Reid said yours is owned isn't it.

Chris Combs said what's that.

Richard Reid said yours is owned over on Bell Road.

Chris Combs said that is correct.

Richard Reid said and these are going to be rented...

Chris Combs said I'm not sure what he's going to do, I thought he was going to sell them but I guess he's got that option or whatever.

Scott Buedel said and just to add whatever was Molly was reading in the Staff Report, this area is moderate to high density residential. He said so we're falling within the confines of what this area is designated to be and I understand what Krista and the neighbors are concerned with creep happening and move on down Oak Grove Road but from the standpoint of what was on this site, what would be replaced and put back on this site, I mean I think it's night and day. He said and then as you go down the road, things are well maintained, you know, there's not dilapidated houses that just need to be bulldozed. He said as far as your only improvement option, I think everything gets nicer as you go down the road and from the standpoint of doing a multi-family apartment complex or anything like that down the road, I think it's further and further away from reality.

President Valiant said thank you. He said Mr. Doll, without the owner present...

Attorney Doll said you know, our rules are really clear. He said we have to have the property owner present to take action to approve a petition or a legal representative with a recorded power of attorney, which I'm sorry...

Chris Combs said I understand, which we do not have.

Attorney Doll said so I don't think this is eligible for consideration tonight. He said I mean, we can take the public hearing part and then I think it needs to be tabled until Mr. Wedding can either appear with you, Mr. Buedel, or he can give Chris or you power of attorney. He said Molly's office usually helps you get recorded so we'll be happy to help facilitate that but I don't think it's eligible tonight and we already know there's opposition so that creates a legal technicality which means it could be struck if a judicial review was sought.

Chris Combs said when would that go back.

Attorney Doll said next month.

Chris Combs said well we certainly understand that and we can work it one way with Mr. Wedding or we can be back. He said so no issue there. He said in the mean time, we might reach out to the attorney and make sure that they understand exactly what it really is.

President Valiant called for a motion to table.

Richard Reid moved to table until the October 12th meeting. The motion was seconded by Bob Johnson and carried unanimously.

Attorney Doll said Chris can appear but Mr. Wedding has to give you POA.

Chris Combs said I know, like I said, it was a last minute thing that I was asked to come. He said I was about 99.9% sure, Morrie, that I was going to hear exactly what you just said but I just figured I'd go ahead and get the process started.

Attorney Doll said we have a lot of people here, I wonder if they're waiting on something.

Jeff Willis said probably the complaints...

President Valiant said Hanover.

AMENDMENT TO THE ZONING ORDINANCE:

AN ORDINANCE TO AMEND ARTICLE V SPECIAL USES SECTION 3 SPECIAL USE DESIGNATIONS OF THE COMPREHENSIVE ZONING ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA

The purpose of this ordinance is to allow exceptions from the SU-18 requirement. *Advertised in the Standard September 3, 2020.*

AN ORDINANCE TO AMEND ARTICLE XXIV ADMINISTRATION SECTION 3 APPLICATION FOR IMPROVEMENT LOCATION PERMIT OF THE COMPREHENSIVE ZONING ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA

The purpose of this ordinance is to list requirements for small cell towers that are exempt from the SU-18 requirement. *Advertised in the Standard September 3, 2020.*

Mrs. Barnhill said the committee met and we've come up with this amendment to our ordinance to exempt out small cell facilities from our special use requirement but to also, well the ones that qualify for a small cell, which do not exceed the height regulations of the district where it's proposed to be located, maximum, wouldn't have to get a special use but they would have to come in for a commercial site review and meet the requirements of the next ordinance including the site plans showing the location of the tower including any associated equipment, structural plans including elevation and plan views, antenna designs showing total volume, evidence demonstrating that no existing structure can accommodate applicant's proposed facility. She said that could even be in the form of a letter saying it can't but we need it written as evidence. She said we need a copy of the installer's FCC license and all existing structures no longer used shall be removed within six months of cessation of operations at the sight. She said so that is what we have come up with and it's for your review.

Bob Johnson said I may have missed something that Molly was reading but we had discussed a month or so ago about existing towers, does this include that or...

Attorney Doll said I think it does, this doesn't delineate between new towers or existing towers so therefore, I think it includes both.

Bob Johnson said so if I have an existing tower, I need to get a special use permit to get this installed on my tower.

Attorney Doll this exempts small towers, excluding...

Mrs. Barnhill said from the special use requirement. She said they're still a structure, so they would require a permit including structural plans.

Attorney Doll said but if it's an existing and the structural plans don't exist...

Mrs. Barnhill said it's pre-existing non-conforming.

Attorney Doll said yes, so if you have an existing tower and it's been there for a number of years and we don't even know how manufactured the tower is so we can't possibly have manufacturing plans or specifications, it would be a pre-existing non-conforming. If you're installing a new tower, we'll know where it came from, we'll know what manufacturer made it and it will normally come with an online version of the drawings and so that will suffice. He said if you don't exceed the zoning classification maximum height, you will not be required to get a special use to use it for any of these purposes. He said if your district does not have a maximum height, like I believe agricultural does not have a maximum height if I remember correctly...

Mrs. Barnhill said it's 40 feet.

Attorney Doll said oh, well if it did not have a maximum height then it could not exceed 50 feet so under all circumstances, small towers can't be greater than 50 feet in height. He said what this will do is, as you know, anyone who wants to put in a cell tower now has to get a special use, an SU-18. He said we meant that to be for the 300 footers or 200 footers but now we're finding that Warrick County is trying to implement a very admirable policy to make wireless internet service available throughout the county through cell towers like this. He said the technology has changed and with small towers like these, you can service a certain area of the county, more than just one person. He said it's good for the county, good for the economic development and frankly, it's a lot less obnoxious looking in the environment to have a small tower instead of a 300-foot tower. He said for all those reasons, this was the public policy we were trying to address and I think this is a pretty good first step and I would recommend the Board affirmatively refer it to the County Commissioners for their consideration.

President Valiant called for any other questions. Ascertaining there were no other questions, he called for a motion.

Bob Johnson made a motion to recommend the amendment to Article 5, Special Use Section 3 to the County Commissioners. Richard Reid seconded the motion and it was carried unanimously.

Attorney Doll said isn't it Article 24.

Mrs. Barnhill said there's two of them so we'll need two motions.

Attorney Doll said oh, sorry.

Attorney Doll said this second one came about over several conversations among local officials about the types of things that should be necessary like you'll need a copy of an FCC license by the installer. He said I mean, there's just some safety factors and some frequency regulations we need to make sure are going to be adhered to and requiring that these be installed by licensed professionals that would be one way to ensure that there's accountability and it's being done, that the structure will be removed when it's not being used any longer. He said there are plans available, that we made available, those types of things. He said these are things that people that work in the industry have told us, elected officials have told us they felt would be appropriate to require to get a permit for the installation of these small cells.

President Valiant called for questions from the board. Ascertaining there were no questions, he called for a motion.

Bob Johnson made a motion to recommend to amend Article XXIV, Section 3 to the County Commissioners. Jeff Willis seconded the motion and it was carried unanimously.

OTHER BUSINESS:

Complaint: Dave Stephenson - 8577 Hanover Drive, continued from August 10, 2020.

Mrs. Barnhill said the last meeting, the Board determined...

Attorney Doll said Mr. Stephenson...

Mrs. Barnhill said the last APC meeting, the Board determined that Mr. Stephenson was in violation of the zoning ordinance. She said he had 30 days to clean up his property. She said I did put that in writing. She said he has called the office multiple times stating he didn't think he would have enough time to get it cleaned up and he wanted additional time, which we told him he had to come back here and talk to you guys about that. She said we did our site visit on September 11th and those photos, they're tall in chronological order, so they're in the back. She said we had some other Board members drive by, August 25th, those are in there too. She said he said he thought he could get it cleaned up the rest of the way today.

Mr. Stephenson said everything you guys have asked to get cleaned up is cleaned up. He said I had it cleaned up before Monday.

Mrs. Barnhill said did you bring any photos or anything.

Mr. Stephenson said I had taken photos and sent to your office of what I had accomplished. He said I have a very little bit of wood left to remove from the side of the house and I sent those pictures via email to your office.

Mrs. Barnhill said those are in the back.

President Valiant said when were these taken.

Mr. Stephenson said I think that was taken on Friday.

Mrs. Barnhill said he called right after we had gone out there and took the pictures Friday...

Mr. Stephenson said they should be the same, but all that is gone now.

President Valiant said all the trucks are gone, the bucket truck and everything.

Mr. Stephenson said yes.

President Valiant said so you said these were Friday, that you sent...

Mr. Stephenson said yes.

President Valiant said so the log splitter...

Mr. Stephenson said that's all moved to the back.

President Valiant called for any questions from the board. He also called for remonstrators.

Connie Rieffel was present. She said the bucket truck is gone, for now. She said the International and the trailer are all sitting at Walmart. She said they bounce from Walmart to the house. She said they're going to come back, the truck now is loaded full of wood because he just got done cutting several trees south of us. She said everything is gone but it will be back. She said the trucks still don't have licenses which I don't understand and at the moment, they are at Walmart.

President Valiant called for any other remonstrators.

Kurt Eberline was present. He said since the Board made its recommendation that no wood was to be brought back in, wood has been brought back in. He said branches have been coming back in on trailers but they're taken across the street. He said wood was coming back in. He said it all gets carted across the street to a neighbor's yard where it's piled up in the backyard. He said he was not supposed to be operating a business but he did just get done cutting three trees down with the bucket truck. He said it was fully loaded along with another trailer. He said they play the shuffle game between the Walmart, the home and some other place they go. He said based on whatever your decisions are, when these logs and truck come back, whom do we call so that we can stay on this. He said the neighbor across the street where the two oak trees were cut down, all that wood is still laying in the yard. He said basically, he didn't start cleaning up for probably 20 days. He said there's been a lot of activity within 48 hours. He said extend the time and I'm sorry but we are going to be back here and we're going to waste a lot of your time.

President Valiant said that's what we're here for so you're fine. He said we'll answer all your questions here in a second, thank you.

Wendy Eberline was present. She said Dave, it looks better and thank you. She said it looks better. She said if you noticed in the pictures, all along the house in the front of the garage, could you throw it in the garage. She said the concern is the past, if it will happen again. She said Dave, you have a lovely looking house, you should be very proud of it, I hope you keep it up.

President Valiant called for any more remonstrators. He said Mr. Stephenson, do you want to address any of the concerns.

Mr. Stephenson said if they had complaints in the beginning, they could have come to me but they didn't. He said secondly, the trucks, alright...

President Valiant said address the Board.

Mr. Stephenson said I did bring wood in after I cleaned up the side of the house. He said and then to address the things parked on the street, I tried to put in a gravel drive on the side of the house. He said they have their storm water draining into the side of my house and it's washed it all out. He said my plan was to park trailers there in the future. He said my personal trailer, you guys said I couldn't bring that back to my house and I disagree with that.

President Valiant said it's one thing when it's a trailer, it's another when it's a flatbed, a bucket truck when we're not running a business...

Mr. Stephenson said I wasn't running a business at that time. He said I got laid off 3 weeks ago and I called the Area Plan Commission and notified them of what happened and told them I needed to pick up work because I wasn't satisfied with what I was told by unemployment so I started cutting trees again. He said I wasn't bringing limbs to the house, I have receipts from farms where I discarded the trees properly. He said limbs being burnt in the backyard I have no idea, it wasn't limbs off my job and it wasn't limbs off her house. He said so I don't know what he thinks he's talking about. He said I did bring the truck back to do a tree job just south of me. He said I took down three maple trees.

President Valiant said when you say the truck, are you talking about the bucket truck or the red truck...

Mr. Stephenson said no sir, I pulled the dump truck in, it was not loaded, I needed to get some other things to finish that job as well as eat dinner. He said as soon as I came in, I was not there 15 minutes before I left again. He said that truck did not show back up. He said it has been at Walmart, which I have permission to park there temporarily. He said the place I had originally kind of fell through a little bit, we're still working things out. He said he wanted me to take down a tree at his house but unfortunately during one of the last storms, the branch fell down, broke the lines and snapped the telephone pole. He said Vectren took the rest of the tree down. He said now something else has to be worked out so what's worked out there, it's up in the air still. He said that's why I asked Walmart if it was okay to park there temporarily and they said yes. He said just to go ahead and clarify, there's obviously going to be a problem with me

parking there permanently, which I don't plan to, but if I decide to keep the tree working job permanent, I do run an on-call service so would I be allowed to park the truck at the house.

President Valiant said you would go through the proper channels to get that done if it is going to be a business.

Mr. Stephenson said I did have to pick up insurance so I'm insured for the next year anyway, annually is the only way to do that. He said that's where the rest of my funds went because I needed money and I can't wait for weeks on end for money to come to me so instead of taking unemployment I just did what I knew how to do. He said I was a lineman for 20 years and I have connections there I'm looking at servicing lines for probably Vectren and AT&T right now. He said I want to take the proper steps and not be harassed. He said I don't want to displease my neighbors. He said it was brought to you that I was disrespectful and I don't care about my neighbors but that's not true at all. He said in fact, if you go up and down the street and ask people, I've done free work for a lot of people. He said I've done free work for people sitting in this room, that's including Connie.

President Valiant called for questions from the Board.

Richard Reid said are you leaving these logs in the front yard, is that what you're doing.

Mr. Stephenson said I was splitting logs in the front yard, yes sir, because it was...

Richard Reid said the ones that were there originally.

Mr. Stephenson said yes sir, which was being taken to the backyard to split but it's a whole heck of a lot easier to move chips off the concrete instead of digging them out of the grass, hauling them to the front yard to dispose of. He said stuff like that doesn't really burn up in a fire in the backyard.

Bob Johnson said when you say you want to bring your truck back and put it in front of your house, what truck are you referring to. He said is it your bucket truck.

Mr. Stephenson said what I was referring to, sir, is that there are mechanical problems and issues with the truck and I would like to bring it back to the house to fix it or work on it temporarily. He said like he told me, there's proper channels I'm going to have to go through to figure this stuff out.

Attorney Doll said that doesn't answer the Commissioners question, he asked you which truck.

Bob Johnson said which truck are you talking about.

Mr. Stephenson said the dump truck and the bucket truck.

Bob Johnson said my concern there is the safety factor that people can't see around your truck in that small little area there.

Mr. Stephenson said if they take care of their water problems, that drive will be put in and there then it won't be on the street.

President Valiant said alright am I safe to assume, and I'm going to look at the audience on this one, that in the last 48 hours to 72 hours we've got it where everybody is more or less okay with how it looks and we're just concerned about coming back, yes or no.

The audience said yes.

President Valiant said okay so we've got that sorted out and the audience is okay with it as long as it doesn't return to where we were and that's not going to happen. If we're going to go down the road of a business, we're going to have to go through the proper channels. He said the trucks are not going to come back unless we go the business route.

Mr. Stephenson said well there's still some stuff I'm getting rid of.

President Valiant said well if you come in to pick stuff up I don't think anyone's going to complain. He said as long as you're not leaving it there.

Mr. Stephenson said I can't pull up to take a lunch break without someone calling the cops on me.

President Valiant said I mean, I'll be honest, I drove up there 3 times within the last month and the first time I went up was two weeks after our meeting and there was more wood than when we had the first meeting so I knew you were bringing stuff in.

Mr. Stephenson said there's more wood.

President Valiant said yes there was more wood in the front yard that wasn't there for the first meeting. He said so I know there was more stuff brought in but I'm not going to sit here and argue about that. He said it sounds like we've got it in the shape we need it for tonight so what's the wishes of the board.

Wendy Eberline said just so we understand, if he applies for a license to be a wood cutter, that would allow him to bring all that equipment back.

Attorney Doll said it would have to be rezoned.

President Valiant said it will be rezoned, which everybody will be notified and it goes through legal channels. He said it's not like it happens overnight.

Wendy Eberline said that's too bad because what a waste of time.

President Valiant asked what are the wishes of the Board.

Attorney Doll said find it temporarily in compliance.

President Valiant said according to the neighbors, and I understand the concern about it coming back, that would be a concern of mine as well but he said if it's there for 5 minutes while the man is getting lunch then I'm sure you guys will be understanding of that. He said we can argue whether it's 5 minutes or overnight but I think when it's weeks and weeks...

Mr. Stephenson is speaking inaudibly from the audience.

Mrs. Barnhill said the only way you can operate a business out of your home is if you apply for a special use which he does not qualify for any kind of special use because that would take a commercial rezoning.

President Valiant said that's right, he would have to rezone.

Attorney Doll said and that's a spot zoning which the Indiana Supreme Court says is improper. He said he can try it.

President Valiant said granted, we waited til the last minute but we are in compliance now. He said I have the same concern that the neighbors have.

Mrs. Barnhill said we don't care to go back out there if you'd like to wait...

President Valiant said I'm sure if anything happens, we'll be the first to know. He said I would recommend that it's temporarily in compliance and we just look at it a few times.

Mrs. Barnhill said do you want to table it for a month or do you want to close it.

President Valiant said that's a good idea, why don't we table it for a month and that way we're keeping an eye on it and I know you folks are keeping an eye on it. He said I know that you're going to do everything that you can do to keep everybody happy because they're tired of coming here, you're tired of coming here.

Jeff Willis said is there a way we can go back out there a couple times and send them a letter if he's in compliance can we let them know in advance that we're not going to talk about it.

Mrs. Barnhill said do what.

Jeff Willis said is there a way we can let them know in advance that we're not going to talk about it.

Mrs. Barnhill said if I go out there and take pictures and everything looks like it's in compliance, I still want to bring it up at the next meeting for someone to make a motion to close it so I can close the file.

President Valiant said yeah that's actually a good idea. He said so we'll make that a motion.

Bob Johnson made a motion to table it and keep an eye on it for a month. Richard Reid seconded the motion and it was carried unanimously.

Mrs. Barnhill said it would be on the agenda on October 12th.

President Valiant said it will be back on the agenda on October 12th.

Mr. Stephenson (inaudible)

President Valiant said can you come up to the microphone because they have to hear you so they can write it down.

Mr. Stephenson said can you clarify what is allowed and not allowed. He said I'm able to split wood in my back yard, if I bring wood in then it needs to go to my backyard...

President Valiant said it needs to stay cleaned up, like how it is right now...

Mr. Stephenson said I have no problem further cleaning it up if I can get some people to work with me. He said I'm not against any of these neighbors, I'm not against anybody. He said I admit things got out of hand, and they did.

President Valiant said and I think everybody would agree with that.

Mr. Stephenson said I know they would agree and I'm not fighting them on that.

President Valiant said so here's what you've got, you've got 30 days to kind of prove yourself to them.

Mr. Stephenson said well I need them to work with me too.

President Valiant said I think you're on the right path, everybody here has already said you're going down the right path. He said you've got 30 days and then we'll finish this out next month. He said does that sound good.

Mr. Stephenson said that's fine by me.

Complaint: Rachael Fisher- 8721 State Road 161

President Valiant called for a staff report.

Mrs. Barnhill said we had a complaint filed by Garrison Chapel Church. She said they submitted a letter.

President Valiant asked is this the carnival equipment.

Mrs. Barnhill said yes, this is the carnival equipment and I do not know where to put it exactly but the letter says:

Garrison Chapel owns the property in front of and next to the property listed in the subject line of this complaint. Since the new owner's purchased the property in 11/28/2018, they have used their property and part of Garrison Chapel to store carnival equipment during most of the year. The only time the carnival equipment was removed, and not all of it, was during the month's of June to August and they would bring it back and place it on their property as tightly and compactly as they could, and even then they would have to use some of our property as the equipment would impinge and hang over the property lines.

Mrs. Barnhill said the letter goes on to talk about an easement and that the owner has been using the northwest corner of their driveway and parking lot to move some of their carnival equipment in and out for storage. She said the letter then states:

We have repeatedly discussed the issue with owner's about the trouble this has caused us and asked if they would move the equipment to another location. At one time, the owner's moved the equipment on Garrison Chapel's church property that contains a lateral field for our septic system and this potentially caused damage to it. On May 28, 2020 a survey was done by Easley Engineering. The surveyor outlined where the property of Garrison Chapel Church and the property of Rachael Fisher lies and based on the following pictures, the Carnival equipment is clearly on Garrison Chapel property. Furthermore, the surveyor informed one of the Church Trustee's, that the property is zoned residential and should not be used to store commercial equipment which all of this carnival equipment would be. Garrison Chapel Church is asking the Planning Commission rule as to whether the carnival equipment can be stored on this property, as it is zoned residential, according to the Warrick County zoning description and that the carnival equipment be removed if the Planning Commission rules against the carnival equipment being stored there and the fact the owners of the equipment cannot store and move the equipment without violating property lines of Garrison Chapel Church. Sincerely, Johnny Maltby.

Mrs. Barnhill added he is the Trustee of the Church. She said he submitted pictures and they did call the office a couple of times because they were having issues with all this equipment on their property so then they had the survey done and they filed the complaint. She said I sent the letter to the owner, and I guess it is the owner's boyfriend who is storing the equipment there. She said he says it is a hobby of his and he wants to start a business someday. She said he fixes them up but he is not doing a business now. She said he was going to come tonight but he did call today and said he had to work so he could not come in. She said we did go out and do a site visit and those photos are in your packets.

President Valiant asked so his hobby is working on this equipment or...

Mrs. Barnhill replied he says he tinkers on them and fixes them up and I guess sells them. She said I am not real sure. She said that is why I asked him to come in.

President Valiant asked you said some of this had been moved since.

Mrs. Barnhill said yes, he has moved it onto his property now.

Attorney Doll asked I am sorry what.

Mrs. Barnhill said he has moved the carnival equipment onto his property.

Attorney Doll asked onto who's property.

Mrs. Barnhill said onto his own, the girlfriend's property.

Attorney Doll asked so it is not his property. He said it is Rachael's property.

Mrs. Barnhill said yes, it is the boyfriend.

President Valiant said okay, so they have moved all the equipment off of the church's property. He said so we have that issue resolved, but we now have the equipment to address.

Richard Reid said I think it needs a pole barn.

Attorney Doll asked how could this not be a business. He said I mean the purpose of these items is to operate at County Fair's.

President Valiant said well even if he is working on them would that not be a business.

Attorney Doll said yes, this has to be a violation of the Zoning Ordinance. He said the fact that they crossed the property line is trespass, that is not our problem. He said that is a court's problem, if they want to go to court and also they could build a fence if they wish. He said we do not enforce trespass, but this has to be the same thing we just saw with the tree company. He said he is using property out of compliance with the zoning category and I think the appropriate action would be a cease and desist notification to tell him he has to get it out of there. He said you know, it will probably end up at Walmart but... He said my recommendation legally is, the trespass is outside of our area, but this is a business and ought to be a cease and desist.

Jeff Willis said well he is not running fair's with them, it is not other people's equipment that he is bringing in to work on...

President Valiant said I don't think we know whose equipment it is.

Attorney Doll said right, we do not have any idea whose pieces of equipment these are.

President Valiant said apparently it is his hobby to...

Attorney Doll asked do we even know the guys name.

Mrs. Barnhill said no.

Jeff Willis said I mean, have you seen the shows where they make roller coasters in people's backyards. He asked now how does that work with zoning. He said these are personal roller coasters that people put in their own backyards.

Attorney Doll said I have seen them, not in my backyard, but I have seen them. He said this is commercial stuff. He said this is meant to be used at public gatherings, which there probably have not been a lot of public gatherings this year. He said I think most County Fair's are shut down this year so...

Jeff Willis asked how would this be different than him collecting cars in his backyard.

Attorney Doll said well this isn't about cars, and actually they would have to have them licensed and plated and things of that sort so you cannot do that. He said do you look around the county and see it in lots of places, yeah, but the Sherriff has the enforcement capacity.

Jeff Willis said well do these trailers, well I guess they are trailers so they don't have to be plated unless they are on the roads.

Attorney Doll said no, they are supposed to be plated too just like a motor vehicle.
Bob Johnson said that was what I was looking for too, is some type of plate.

Jeff Willis said we have most pictures from the front so we can't really see that.

President Valiant asked so how does the Board feel on the cease and desist.

Richard Reid said it sounds good.

Jeff Willis said I would like to talk to them about this at the next meeting. He asked is the church okay with them having it there if it is not on their property, or are they saying since it is residential they should get in trouble.

Richard Reid said both.

Mrs. Barnhill said they had called several times wanting to know what they could do about the carnival equipment being on their property.

Jeff Willis said their property.

Mrs. Barnhill said that was their big issue. She said they spoke with the owner of the property and the owner did not incorporate at that point in time. She said they did not move it until after they got their letter from our office.

Jeff Willis said okay.

Attorney Doll said off of the Church's property.

Mrs. Barnhill said yes, off the Church's property.

Jeff Willis said I would kind of like to hear from him next month before we tell him anything. He said if it is for his hobby in the backyard and it is agricultural, you know, I do not know how big their lot is but I am guessing it is a couple acres.

Attorney Doll said if he is growing vegetables to sell at a fruit stand or something of that sort that would fit. He said I cannot fathom anyway that carnival equipment fits in an agricultural zoning district.

Jeff Willis said that is true. He asked what if it is personal use, like a gazebo or something else in somebody's back yard.

Attorney Doll asked this is for his personal use.

Jeff Willis said I don't know. He said that is why I want to hear from him. He said it was his hobby, but he might be lying I don't know.

Attorney Doll asked well how many rides are there here.

Bob Johnson said I see about four.

Attorney Doll said four or five.

Jeff Willis said I am just saying if he buys them for fun that would be a fun backyard to go to.

Bob Johnson said it would fit in our yard, but it is not coming there.

President Valiant said so if we send them a cease and desist they are going to be at next month's meeting.

Jeff Willis said but he has to get rid of them before then if we do a cease and desist, right. He asked isn't he supposed to do it immediately.

Attorney Doll said I do not know how you get him here. He said we told him to be here tonight and he did not come.

Richard Reid said a cease and desist will get him here.

Attorney Doll said yeah.

Richard Reid made a motion to send a cease and desist letter to the owner of the property. The motion was seconded by Bob Johnson and carried unanimously.

Bill Byers asked do we have an obligation to go after him on the zoning.

Attorney Doll said once we get a complaint, the Board has to make the decision whether to enforce on an action. He said our ordinance contains enforcement powers, toward the back of the ordinance that allows us to file a petition in court to compel people to comply with the zoning districts. He said their property is located... we have done that with Mr. Wolf, three or four times, who was operating a salvage yard at his house on Outer Lincoln. He said I am not going to tell you it is the most effective means, it is like using a shot gun to kill an ant, but sometimes it works. He said the court will, usually if we prove our case, which we have never not, the court will order him to come into compliance and give him a 30 day period of time and if he fails to comply with the order he will then be in contempt of the Warrick Superior Court. He said he is not dealing with us then, he is dealing with guy in the black robe and it is up to him as to what he will or won't do. He said contempt is punishable by all kinds of things, including incarceration in the Warrick County Jail, until he purges himself of the contempt. He said have I seen them do that, no. He said I have seen them scare the bejesus out of people thinking they were going to be doing that, and usually that accomplishes the purpose. He said I mean I do not know how to get the guy here, if the guy would have come here tonight that would be a big step and we could have talked to him and figured out answers to all these great questions.

President Valiant said yep, like I said, I think the letter is going to get him here next month.

Attorney Doll said right, a cease and desist and to appear at the meeting next month. He asked is that the motion.

Richard Reid said yes.

President Valiant said that was then seconded and then voted on.

Attorney Doll said okay.

President Valiant said alright, he asked if there was any other business.

Rick Reid made a motion to adjourn. Bob Johnson seconded the motion and the motion carried unanimously.

ATTEST:

Molly Barnhill, Executive Director

Jeff Valiant, President